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July 21, 2011

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551

*Submitted via email – [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)*

Re: Docket No. R-1417 – Notice of Proposed Rulemaking 7100-AD75  
(76 Fed. Reg. 27390 (May 11, 2011))

Dear Ms. Johnson:

The Independent Bankers Association of Texas (IBAT), a trade association representing approximately 500 independent community banks domiciled in Texas, offers these comments on certain aspects of the proposed revisions to Regulation Z (Reg. Z) made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) with regard to the expansion of the scope of the availability-to-repay requirements to cover any consumer credit transaction secured by a dwelling (excluding an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan). In addition, the proposal would also establish standards for complying with those ability-to-repay requirements. All members of IBAT make residential mortgage loans and would be affected by these changes.

As we have said in previous letters to the Federal Reserve on the issue of mortgage lending, IBAT and its members stand firmly in opposition to predatory lending, and we encourage Congress and the federal financial institution regulators to carefully craft laws and rules that halt these unscrupulous lending practices without inflicting irreparable damage to our members' legitimate lending operations, which are the financial lifeblood of their local communities. It is worth reiterating that Texas community banks do not make mortgage loans based on collateral value and a borrower's repayment ability is always the paramount concern for community banks. The proposed documentation requirements to support something community bankers are already doing simply adds to the regulatory burden.

After reiterating that overall concern, there are a number of aspects of the proposed rulemaking that we are concerned with.

### Ability-To-Repay and Safe Harbor

It was unclear from the proposed rule if a bank that makes a "qualified mortgage" is indeed granted safe harbor or if it is merely a rebuttable presumption of compliance with the ability-to-repay requirement. The Board

sought to counter that with two alternatives. If the Board intends to encourage banks to make “qualified mortgages” it should state without ambiguity that a “qualified mortgage” is in fact evidence a bank complied with the ability-to-repay requirements (Alternative One). Ambiguity opens the door to potential subjective analysis. Alternative Two simply adds more documentation requirements to achieve the same outcome as Alternative One.

### **Balloon-Payment Qualified Mortgage Exception**

One of the options a bank can use to demonstrate compliance with the ability-to-repay requirements is to originate balloon-payment qualified loans in a “rural” community. The definition of “rural” is too restrictive and will result in a number of Texas banks being excluded from this option.

Quoting from IBAT’s Comment Letter dated April 29, 2011 on the definition of “rural” with respect to the escrow requirement for higher-priced mortgage loans (HPML’s):

We realize that the proposal is based on thoughtful work by the Federal Reserve, but it is evidence that a restrictive one-size-fits-all approach to determining whether an area is rural is impossible and unworkable. A different approach, and one that doesn’t rely on the population of unrelated geographic areas, is needed. And what does IBAT contend is rural? With apologies to the late Supreme Court Justice Potter Stewart’s comments on how he knew something was obscene, all we are really sure of is that we know a rural area when we see it. What Justice Stewart knew was that there are some things that you just know when you see, but they are difficult or impossible to define. We know that Dumas and Spearman are rural areas, but it is difficult to suggest a definition for rural that would include them both and fairly determine which areas are rural in the remainder of Texas and the entire United States.

Our objection to the definition of “rural” has not changed since that Comment Letter was submitted.

The Board requested input on the total annual residential mortgage loan originations a qualified creditor may make in order to qualify for the balloon-payment qualified mortgage exception. Much like the adoption of a definition of “rural,” this provision seeks to apply a one-size-fits-all approach. A reasonable threshold based upon the relatively small number of mortgage loan originations made by Texas community banks – and a number that is not overly constrictive – should be no less than 500.

Another requirement for the balloon-payment qualified mortgage exception would require a community bank to retain the loan in its portfolio. This is the standard practice for Texas community banks. The Board has proposed two alternatives for complying with this requirement. Alternative One provides that a creditor must not sell any balloon payment loan on or after the effective date of the final rule and to do so would result in a permanent disqualification from the exception. Alternative Two limits the time frame a creditor must not have sold any balloon payment loans to the preceding and current calendar year. Alternative Two coupled with a de minimis number of transfers without losing eligibility provides a reasonable alternative to an all or nothing approach.

### **Definition of Points & Fees**

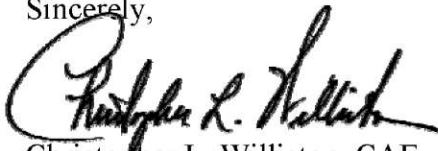
Dodd-Frank limits the points and fees paid in connection with a qualified mortgage to no more than 3% of the total loan amount. The proposed definition of those “points & fees” include all compensation paid directly or indirectly by a consumer or creditor to a loan originator. The proposed definition excludes a loan originator’s base salary but includes a bonus paid to loan originators based upon the amount or number of qualified

mortgages. Texas community bankers utilize a number of commission programs based upon the amount or number of qualified mortgages. This changing definition of what is or is not a fee based upon volume could result in a different calculation of that 3% limit in any given month or point in that month. How does that benefit the consumer? Again it seems to add a great deal of burden to the bank for little – and in this particular situation – no benefit to the customer.

In closing, the adoption of these proposed rules will only add to the already heavy burden placed on community banks in Texas and throughout the nation and attempt to fix something that is not broken. A more effective option would be to exclude all in-portfolio loans from the proposed rulemaking or at least re-write the rules to address only nontraditional lending products and predatory lending practices.

Thank you for the opportunity to comment and for your consideration of our comments. If you would like to discuss this issue, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher L. Williston". The signature is fluid and cursive, with a large initial "C" and "W".

Christopher L. Williston, CAE  
President and CEO